

UNITED STATES DISTRICT COURT

FILED
RICHARD W. NAGEL
CLERK OF COURT

for the

Southern District of Ohio

10/8/20

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)INFORMATION ASSOCIATED WITH INSTAGRAM
USER ID "FederalFetty" THAT IS STORED AT
PREMISES CONTROLLED BY INSTAGRAM INC.

Case No. 3:20-mj-468

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WEST. DIV. DAYTON

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

SEE ATTACHMENT A

located in the _____ District of _____, there is now concealed (identify the person or describe the property to be seized):

SEE ATTACHMENT B

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☒ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	Offense Description
18 U.S.C. § 2119(1)	Car jacking
18 U.S.C. § 924(c)(1)(A)(iii)	Use of a firearm during and in relation to a crime of violence
18 U.S.C. § 371	Conspiracy

The application is based on these facts:

SEE ATTACHED AFFIDAVIT

☒ Continued on the attached sheet.☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.


Applicant's signature

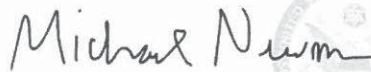
DUSM STEFAN MORGAN, U.S. MARSHALS SERVICE

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by _____
(specify reliable electronic means).

Date: 1:13 PM, Oct 8, 2020

City and state: DAYTON, OHIO


Michael J. Newman
United States Magistrate Judge

E JUDGE

Via electronic means.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN THE MATTER OF THE SEARCH OF
INFORMATION ASSOCIATED WITH
INSTAGRAM USER ID "FederalFetty"
THAT IS STORED AT PREMISES
CONTROLLED BY INSTAGRAM INC.

Case No.

Filed Under Seal

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, Stefan Morgan, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant for information associated with a certain Instagram user ID that is stored at premises owned, maintained, controlled, or operated by Instagram Inc. ("Instagram"), a social networking company headquartered in Menlo Park, California. The information sought to be searched is more specifically described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant pursuant to 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Instagram to disclose to the government records and other information in its possession, pertaining to the subscriber or customer associated with the user ID.

2. I am a Deputy United States Marshal (DUSM) Stefan Morgan with the United States Marshals Service (USMS), and have been since January 19, 2015. My initial training was conducted at the Federal Law Enforcement Training Center in August of 2011. Throughout my career, I have attended annual in service trainings. I have also attended training provided by the USMS on Fugitive Investigations and apprehension techniques. That training included the use of social media accounts to investigate and apprehend fugitives from justice.

3. The facts set forth in this affidavit are based upon my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to merely establish that there is sufficient probable cause for the requested warrant. It is not intended to set forth all of my knowledge about this matter.

4. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that relevant evidence concerning the location of a fugitive person to be arrested namely, A. Phillip Thomas Christian Daugherty (hereinafter referred to as "Daugherty") will be found on a Instagram account. There is probable cause to search the information described in Attachment A.

PROBABLE CAUSE

5. On June 17, 2020, a federal arrest warrant was issued by U.S. District Court Judge Thomas M. Rose for Daugherty for bond violations in the Southern District of Ohio in case no. 3:18CR172. On June 17, 2020, I was assigned said warrant. On September 29, 2020, I determined Daugherty had been using the name "FederalFetty" on Instagram. After pulling up said account, I observed Daugherty in numerous real time images appearing with associates located in Dayton, Ohio. Furthermore, I showed the photo of "FederalFetty" to Supervisory DUSM Charles Sanso, who confirmed the identity of "FederalFetty" as being Daugherty. Daugherty's Instagram Photo was last updated on September 28, 2020. On September 29, 2020, I preserved Daugherty's Instagram account. Based on my training and experience, the "FederalFetty" Instagram account will likely contain information concerning the present location or whereabouts and whereabouts of Daugherty who remains a federal fugitive.

6. Instagram, a company which owns and operates a free-access social networking website of the same name that can be accessed at <http://www.Instagram.com>. Instagram allows its users to establish accounts with Instagram, and users can then use their accounts to share written

news, photographs, videos, and other information with other Instagram users, and sometimes with the general public.

7. Instagram asks users to provide basic contact and personal identifying information to Instagram, either during the registration process or thereafter. This information may include the user's full name, birth date, gender, contact e-mail addresses, Instagram passwords, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers. Instagram also assigns a user identification number to each account.

8. Instagram users may join one or more groups or networks to connect and interact with other users who are members of the same group or network. Instagram assigns a group identification number to each group. An Instagram user can also connect directly with individual Instagram users by sending each user a "Friend Request." If the recipient of a "Friend Request" accepts the request, then the two users will become "Friends" for purposes of Instagram and can exchange communications or view information about each other. Each Instagram user's account includes a list of that user's "Friends" and a "News Feed," which highlights information about the user's "Friends," such as profile changes, upcoming events, and birthdays.

9. Instagram users can select different levels of privacy for the communications and information associated with their Instagram accounts. By adjusting these privacy settings, an Instagram user can make information available only to himself or herself, to particular Instagram users, or to anyone with access to the Internet, including people who are not Instagram users. An Instagram user can also create "lists" of Instagram friends to facilitate the application of these privacy settings. Instagram accounts also include other account settings that users can adjust to control, for example, the types of notifications they receive from Instagram.

10. Instagram users can create profiles that include photographs, lists of personal interests, and other information. Instagram users can also post "status" updates about their whereabouts and actions, as well as links to videos, photographs, articles, and other items available

elsewhere on the Internet. Instagram users can also post information about upcoming “events,” such as social occasions, by listing the event’s time, location, host, and guest list. In addition, Instagram users can “check in” to particular locations or add their geographic locations to their Instagram posts, thereby revealing their geographic locations at particular dates and times. A particular user’s profile page also includes a “Wall,” which is a space where the user and his or her “Friends” can post messages, attachments, and links that will typically be visible to anyone who can view the user’s profile.

11. Instagram allows users to upload photos and videos, which may include any metadata such as location that the user transmitted when s/he uploaded the photo or video. It also provides users the ability to “tag” (i.e., label) other Instagram users in a photo or video. When a user is tagged in a photo or video, he or she receives a notification of the tag and a link to see the photo or video. For Instagram’s purposes, the photos and videos associated with a user’s account will include all photos and videos uploaded by that user that have not been deleted, as well as all photos and videos uploaded by any user that have that user tagged in them.

12. Instagram users can exchange private messages on Instagram with other users. Those messages are stored by Instagram unless deleted by the user. Instagram users can also post comments on the Instagram profiles of other users or on their own profiles; such comments are typically associated with a specific posting or item on the profile. In addition, Instagram has a chat feature that allows users to send and receive instant messages through Instagram Messenger. These chat communications are stored in the chat history for the account. Instagram also has Video and Voice Calling features, and although Instagram does not record the calls themselves, it does keep records of the date of each call.

13. If an Instagram user does not want to interact with another user on Instagram, the first user can “block” the second user from seeing his or her account.

14. Instagram has a “like” feature that allows users to give positive feedback or connect to particular pages. Instagram users can “like” Instagram posts or updates, as well as webpages or content on third-party (*i.e.*, non-Instagram) websites. Instagram users can also become “fans” of particular Instagram pages.

15. Instagram has a search function that enables its users to search Instagram for keywords, usernames, or pages, among other things.

16. Each Instagram account has an activity log, which is a list of the user’s posts and other Instagram activities from the inception of the account to the present. The activity log includes stories and photos that the user has been tagged in, as well as connections made through the account, such as “liking” a Instagram page or adding someone as a friend. The activity log is visible to the user but cannot be viewed by people who visit the user’s Instagram page.

17. Instagram also has a Marketplace feature, which allows users to post free classified ads. Users can post items for sale, housing, jobs, and other items on the Marketplace.

18. In addition to the applications described above, Instagram also provides its users with access to thousands of other applications (“apps”) on the Instagram platform. When a Instagram user accesses or uses one of these applications, an update about that the user’s access or use of that application may appear on the user’s profile page.

19. Instagram also retains Internet Protocol (“IP”) logs for a given user ID or IP address. These logs may contain information about the actions taken by the user ID or IP address on Instagram, including information about the type of action, the date and time of the action, and the user ID and IP address associated with the action. For example, if a user views a Instagram profile, that user’s IP log would reflect the fact that the user viewed the profile, and would show when and from what IP address the user did so.

20. Social networking providers like Instagram typically retain additional information about their users’ accounts, such as information about the length of service (including start date),

the types of service utilized, and the means and source of any payments associated with the service (including any credit card or bank account number). In some cases, Instagram users may communicate directly with Instagram about issues relating to their accounts, such as technical problems, billing inquiries, or complaints from other users. Social networking providers like Instagram typically retain records about such communications, including records of contacts between the user and the provider's support services, as well as records of any actions taken by the provider or user as a result of the communications.

21. As explained herein, information stored in connection with a Instagram account may provide crucial evidence of the "who, what, why, when, where, and how" of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, a Instagram user's IP log, stored electronic communications, and other data retained by Instagram, can indicate who has used or controlled the Instagram account. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence. For example, profile contact information, private messaging logs, status updates, and tagged photos (and the data associated with the foregoing, such as date and time) may be evidence of who used or controlled the Instagram account at a relevant time. Further, Instagram account activity can show how and when the account was accessed or used. For example, as described herein, Instagram logs the Internet Protocol (IP) addresses from which users access their accounts along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the account access and use relating to the crime under investigation. Such information allows investigators to understand the geographic and chronological context of Instagram access, use, and events relating to the crime under investigation. Additionally, Instagram builds geo-location into some of its services. Geo-location allows, for example, users to "tag" their location in posts and Instagram

“friends” to locate each other. This geographic and timeline information may tend to either inculcate or exculpate the Instagram account owner. Last, Instagram account activity may provide relevant insight into the Instagram account owner’s state of mind as it relates to the offense under investigation. For example, information on the Instagram account may indicate the owner’s motive and intent to commit a crime (e.g., information indicating a plan to commit a crime), or consciousness of guilt (e.g., deleting account information in an effort to conceal evidence from law enforcement).

22. Therefore, the computers of Instagram are likely to contain all the material described above, including stored electronic communications and information concerning subscribers and their use of Instagram, such as account access information, transaction information, and other account information.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

23. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require Instagram to disclose to the government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

CONCLUSION

24. Based on the forgoing, I request that the Court issue the proposed search warrant. Because the warrant will be served on Instagram, who will then compile the requested records at a time convenient to it, reasonable cause exists to permit the execution of the requested warrant at any time in the day or night.

25. This Court has jurisdiction to issue the requested warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, the Court 18 U.S.C. § 2711(3)(A)(i).

REQUEST FOR SEALING

26. I further request that the Court order that all papers in support of this application, including the affidavit and search warrant, be sealed until further order of the Court. These documents discuss an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may seriously jeopardize that investigation.

Respectfully submitted,



Stefan Morgan
Deputy United States Marshal
United States Marshals Service

Subscribed and sworn to before me on _____, 2020__

MICHAEL
UNITED STATES



Michael J. Newman
United States Magistrate Judge



1:14 PM, Oct 8, 2020

Via electronic means.

ATTACHMENT A
Property to Be Searched

This warrant applies to information associated with the Instagram user ID Federalfetty that is stored at premises owned, maintained, controlled, or operated by Instagram Inc., a company headquartered in Menlo Park, California

ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Instagram/Instagram

To the extent that the information described in Attachment A is within the possession, custody, or control of Instagram Inc. ("Instagram"), regardless of whether such information is located within or outside of the United States, including any messages, records, files, logs, or information that have been deleted but are still available to Instagram, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), Instagram is required to disclose the following information to the government for each user ID listed in Attachment A:

- (a) All contact and personal identifying information, including "FederalFetty" : full name, user identification number, birth date, gender, contact e-mail addresses, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers.]]
- (b) All activity logs for the account and all other documents showing the user's posts and other Instagram activities June 17, 2020 to the present;
- (c) All photos and videos uploaded by that user ID and all photos and videos uploaded by any user that have that user tagged in them June 17, 2020 to the present, including Exchangeable Image File ("EXIF") data and any other metadata associated with those photos and videos;
- (d) All profile information; News Feed information; status updates; videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends' Instagram user identification numbers; groups and networks of which the user is a member, including the groups' Instagram group identification

numbers; future and past event postings; rejected “Friend” requests; comments; gifts; pokes; tags; and information about the user’s access and use of Instagram applications;

- (e) All records or other information regarding the devices and internet browsers associated with, or used in connection with, that user ID, including the hardware model, operating system version, unique device identifiers, mobile network information, and user agent string;
- (f) All other records and contents of communications and messages made or received by the user June 17, 2020 to the present, including all Messenger activity, private messages, chat history, video and voice calling history, and pending “Friend” requests;
- (g) All “check ins” and other location information;
- (h) All IP logs, including all records of the IP addresses that logged into the account;
- (i) All records of the account’s usage of the “Like” feature, including all Instagram posts and all non-Instagram webpages and content that the user has “liked”;
- (j) All information about the Instagram pages that the account is or was a “fan” of;
- (k) All past and present lists of friends created by the account;
- (l) All records of Instagram searches performed by the account June 17, 2020 to the present;
- (m) All information about the user’s access and use of Instagram/Instagram Marketplace;
- (n) The types of service utilized by the user;

- (o) The length of service (including start date) and the means and source of any payments associated with the service (including any credit card or bank account number);
- (p) All privacy settings and other account settings, including privacy settings for individual Instagram posts and activities, and all records showing which Instagram users have been blocked by the account;
- (q) All records pertaining to communications between Instagram and any person regarding the user or the user's Instagram account, including contacts with support services and records of actions taken.

Instagram is hereby ordered to disclose the above information to the government within 14 days of service of this warrant.

II. Information to be seized by the government

All information described above in Section I that constitutes evidence of the present location and whereabouts of federal fugitive Daugherty, including, for each user ID identified on Attachment A, information pertaining to the following matters:

- (a) Bond Violation for the underlying crimes of: carjacking, conspiracy and use of a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. §§ 2119(1), 924(c)(1)(A)(iii) and 371.
- (b) Any information involving the location on whereabouts of Daugherty
- (c) Any information indicating or suggesting either that Daugherty knows she has absconded from federal supervision or is currently a fugitive.
- (d) Any information concerning friends or associates who may know Daugherty whereabouts
- (e) Cell phone number for Daugherty

**CERTIFICATE OF AUTHENTICITY OF DOMESTIC RECORDS PURSUANT TO
FEDERAL RULES OF EVIDENCE 902(11) AND 902(13)**

I, _____, attest, under penalties of perjury by the laws of the United States of America pursuant to 28 U.S.C. § 1746, that the information contained in this certification is true and correct. I am employed by Instagram, and my title is _____.

I am qualified to authenticate the records attached hereto because I am familiar with how the records were created, managed, stored, and retrieved. I state that the records attached hereto are true duplicates of the original records in the custody of Instagram. The attached records consist of _____ **[GENERALLY DESCRIBE RECORDS (pages/CDs/megabytes)]**. I further state that:

a. all records attached to this certificate were made at or near the time of the occurrence of the matter set forth by, or from information transmitted by, a person with knowledge of those matters, they were kept in the ordinary course of the regularly conducted business activity of Instagram, and they were made by Instagram as a regular practice; and

b. such records were generated by Instagram's electronic process or system that produces an accurate result, to wit:

1. The records were copied from electronic device(s), storage medium(s), or file(s) in the custody of Instagram in a manner to ensure that they are true duplicates of the original records; and

2. The process or system is regularly verified by Instagram/Instagram, and at all times pertinent to the records certified here the process and system functioned properly and normally.

I further state that this certification is intended to satisfy Rules 902(11) and 902(13) of the Federal Rules of Evidence.

Date

Signature